

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Revision Application No.S-136 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>05-09-2022</u>	For orders on office objection. For hearing of MA No.8519/2019. For hearing of main case.
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Mr. Mashooque Ali Bhurgri advocate for the applicant.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Amjad Ali Sahito, J:- Through instant criminal revision application, the applicant has impugned the order dated 12.09.2019 passed by learned 3rd Additional Sessions Judge, Hyderabad in I.D. Complaint No.37 of 2010 filed complainant Suriya Kausar, whereby the application filed by the applicant Muhamamd Sididque for restoration of possession of disputed property.

2. Facts leading to the instant case are that the respondent No.7 / complainant Mst. Suriya Kausar Qureshi filed aforementioned Direct Complaint against Dr. Mumtaz Chandio and others under section 3 (2), 5 & 7 of Illegal Dispossession Act, 2005, wherein she stated that she purchased a Bungalow No.A-170/100 admeasuring 100 square yards situated in street No.6 Abdullah Town Qasimabad, Hyderaabdfrom M/s. Hussain Private Limited through its Director Muhammad Ehsan Qureshi on lease for 98 years vide registered sub-lease deed No.2996 dated 29.06.1989, which was also entered in her name in Deh Form-VII of revenue record. It is further stated that after receiving possession of the said Bungalow, she obtained loan from House Building Finance Corporation and the documents of said Bungalow were mortgaged. However, in the year 2007 due to severe illness she shifted to Karachi and Bungalow was locked for about 2 / 3 years. In the meanwhile, she received papers of F.C. Suit No.16 / 2009 filed by one Mairajuddin against complainant who claiming to be owner to have purchased the said Bungalow from her, but later on said suit was withdrawn and she started residing in the said Bungalow. In the month of December, 2009, complainant went to Karachi, however, when after 10 / 12 days when came back found no lock in the main gate of said Bungalow and when entered, found the accused Dr. Mumtaz Chandio, Shoaib Chandio and Imtiaz Chandio, who restrained her to enter into Bungalow and they claimed to be owners of said Bungalow. As such, she filed said Direct Complaint against them.

3. Learned counsel for the applicant submits that the applicant is owner of the disputed Bungalow despite that the learned trial Court has failed to consider this aspect. He contends that the applicant is sole owner of the disputed Bungalow and the respondent No.7 claimant of the disputed Bungalow is not appearing before the learned trial Court, who has no interest, but the applicant has been deprived of despite having valid title in the property but third person namely Ameer Ali Shah is in illegal possession of the disputed Bungalow; as such, the learned trial Court has erred by not appreciating the evidence and allowing the prayer of the applicant. He, therefore, prayed that possession of the disputed Bungalow may be ordered to be restored to the applicant being legal and lawful owner.

4. On the other hand, learned A.P.G. Sindh has supported the impugned order.

5. I have considered the submissions of the learned counsel for the applicant and learned A.P.G. for the State and have gone through the material available on the record with their assistance.

6. Record reflects that Mst. Suriya Kausar Qurehshi, the respondent No.7 / complainant filed application in terms of section 7 (1) of Illegal Dispossession Act, 2005 in aforementioned I.D. Complaint for restoration of the possession of disputed Bungalow. Learned trial Court called reports from concerned SHO and Mukhtiarkar, who reported that the respondent No.7 / complainant is real owner of the disputed Bungalow and the accused have illegally occupied upon it without having any title documents. As such, the possession of disputed Bungalow was restored to respondent No.7 / complainant vide order dated 16.08.2011. It further reflects that the applicant after passing said order, impugned the same before this Court by preferring a Criminal Revision Application bearing No.S-172 of 2011, whereby the said order dated 16.08.2011 was set aside and the case was remanded back to the learned trial Court for conducting proper investigation by officer incharge regarding "illegal dispossession" of complainant / Suriya Kausar and only then a proper speaking order touching the question of illegal dispossession of the complainant shall be passed by the trial Court in accordance with law. The applicant who claims to be the owner of subject Bungalow regarding which the impugned order, whereby interim possession of the said Bungalow was handed over to the complainant, may also be heard and if necessary, may be impleaded as a party in the proceedings.

7. It further reflects from the record that vide order dated 06.02.2013, cognizance of offence was taken against Dr. Mumtaz Chandio,

Shoaib Chandio and Imtiaz Chandio including applicant Muhamamd Siddique and Ghulam Raza and they were directed to furnish surety. Then the case was proceeded and finally on 03.12.2019, the application in terms of section 265-K Cr.P.C. filed by applicant Muhamamd Siddique was allowed and he was acquitted of the charge. Since the application was allowed on the ground that complainant Mst. Suriya and her witnesses have shifted to unknown place and proceedings were initiated against complainant and her PWs and the applicant has been acquitted. The applicant has failed to validate his claim by producing convincing and tangible evidence in respect of his ownership of the disputed Bungalow before the learned trial Court, as such, instant criminal revision application is **dismissed** along with listed applications.

JUDGE

Abdullah Channa/PS